

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES RASO, TRUSTEE of the
MASSACHUSETTS BRICKLAYERS AND
MASONS HEALTH AND WELFARE,
PENSION AND ANNUITY FUNDS,

Plaintiff,

V.

STONWORKS BY RAND and RAND
STONWORKS,

Defendants,

and

BOWDOIN CONSTRUCTION
CORPORATION,

Reach-and -Apply Defendant.

C.A. No. 03-12535-RCL

**ANSWER OF REACH-AND-APPLY DEFENDANT, BOWDOIN
CONSTRUCTION CORPORATION, TO SECOND AMENDED
COMPLAINT**

(1) The reach-and-apply defendant, Bowdoin Construction Corporation ("Bowdoin"), makes no response to the allegations of paragraph 1 of the Second Amended Complaint as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the allegations of paragraph 1 of the Second Amended Complaint.

(2) Bowdoin makes no response to the allegations of paragraph 2 of the Second Amended Complaint as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the allegations of paragraph 2 of the Second Amended Complaint.

(3) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Second Amended Complaint and therefore denies same.

(4) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Second Amended Complaint and therefore denies same.

(5) Bowdoin admits that Rand Stoneworks has a place of business in Scarborough, Maine and is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 5 of the Second Amended Complaint and therefore denies same.

(6) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Second Amended Complaint and therefore denies same.

(7) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Second Amended Complaint and therefore denies same.

(8) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Second Amended Complaint and therefore denies same.

(9) Bowdoin restates its answers to the allegations of paragraph 1 through 8 of the Second Amended Complaint as though fully set forth herein.

(10) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Second Amended Complaint and therefore denies same.

(11) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Second Amended Complaint and therefore denies same.

(12) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Second Amended Complaint and therefore denies same.

(13) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Second Amended Complaint and therefore denies same.

(14) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Second Amended Complaint and therefore denies same.

(15) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Second Amended Complaint and therefore denies same.

(16) Bowdoin restates its answers to the allegations of paragraph 1 through 15 of the Second Amended Complaint as though fully set forth herein.

(17) Admitted.

(18) Denied.

(19) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Second Amended Complaint and therefore denies same.

(20) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Second Amended Complaint and therefore denies same.

(21) Bowdoin admits that it has a contract with the defendant Rand pursuant to which Bowdoin has made payments to Rand, denies the allegations of paragraph 21 of the Second Amended Complaint as stated and, in further answering, states that the terms of its contract with Rand speak for themselves.

(22) Bowdoin admits that it is still working on the "Cypress Lofts Condominium" project and denies the remainder of the allegations of paragraph 22 of the Second Amended Complaint.

(23) Bowdoin makes no response to the allegations of paragraph 23 of the Second Amended Complaint as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the allegations of paragraph 23 of the Second Amended Complaint.

(24) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Second Amended Complaint and therefore denies same.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Bowdoin has paid the defendant, Rand Stoneworks, in full in accordance with the contract between them.

THIRD AFFIRMATIVE DEFENSE

Bowdoin owes nothing to the defendant, Stoneworks by Rand.

FOURTH AFFIRMATIVE DEFENSE

The damages sustained by the plaintiff, if any, were caused by a person or persons for whose conduct this defendant is not responsible.

FIFTH AFFIRMATIVE DEFENSE

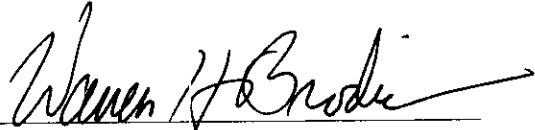
The plaintiff has not performed all conditions precedent to the maintenance of this action.

SIXTH AFFIRMATIVE DEFENSE

The contract between Bowdoin and Rand Stoneworks contains an express condition precedent to the obligation of the Bowdoin to make payment to Rand Stoneworks, *viz.*, the receipt by Bowdoin of payment from the owner of the project that is the subject of this action, and Bowdoin has not received such payment from the owner.

WHEREFORE, the reach-and-apply defendant, Bowdoin Construction Corporation, prays that the Second Amended Complaint be dismissed and for its costs.

For the defendant,
Bowdoin Construction Corporation,
By its attorneys,
Law Offices of Warren H. Brodie, P.C.,

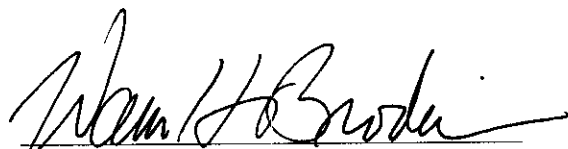
By: 
WARREN H. BRODIE
40 Grove Street
Wellesley, MA 02482
(781) 235-1100
BBO# 058000

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon all attorneys of record by mailing copies of same, postage prepaid, on November 29, 2004 to

Catherine M. Campbell, Esq.
Jonathan M. Conti, Esq.
Feinberg, Campbell & Zack, P.C.
177 Milk Street
Boston, MA 02109

Daniel J. Blake, Esq.
Heather C. Krauss, Esq.
Epstein, Becker & Green, P.C.
111 Huntington Avenue-26th Floor
Boston, MA 02199


WARREN H. BRODIE